

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its Own Motion as to the Propriety of the Terms and Charges Set Forth in Proposed Revisions to M.D.T.E. Tariff No. 17, filed by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts on April 21, 2000, regarding Digital Subscriber Line Services and Line Sharing

DTE 98-
57,
Phase III

AT&T'S MOTION FOR SUSPENSION OF THE TERMS AND CHARGES

SET FORTH IN BELL ATLANTIC'S PROPOSED xDSL TARIFF

PENDING FURTHER INVESTIGATION BY THE DEPARTMENT

Introduction.

On May 5, 2000, Bell Atlantic-Massachusetts ("BA-MA") filed proposed tariff provisions regarding the provisioning of digital subscriber line ("xDSL") functionality as well as xDSL line sharing to competitive local exchange carriers ("CLECs") and to providers of purely data services. By order dated May 8, 2000, the Department opened Phase III of this docket to consider the proposed xDSL tariff, and invited parties to submit comments regarding "the question of suspension of the proposed tariff provisions."

AT&T Communications of New England, Inc. ("AT&T") hereby formally requests that the Department suspend implementation of the proposed xDSL tariff, pending an

investigation into significant issues and problems raised by the tariff proposal. In its current form, the proposed xDSL tariff contains provisions which would, if implemented, have an immediate and substantial negative impact on the growth of local service competition in Massachusetts. BA-MA's proposed xDSL tariff raises questions which must be resolved before the tariff is put into final form and allowed to take effect. AT&T respectfully requests that the Department suspend the effective date of the tariff and establish a procedural schedule for investigating and resolving these issues.

For example, the proposed tariff would improperly bar CLECs from offering both voice and xDSL services across a customer's existing loop. Though BA-MA would remain free to provision data services in this manner, either alone or in conjunction with a separate provider of data services, Bell Atlantic is attempting to discriminate against CLECs by denying them the same opportunity. Furthermore, BA-MA insists that it will not engage in line sharing with a data provider unless the other carrier purchases its own splitter equipment. This is both unlawful and inefficient. It is unlawful because BA-MA cannot provide the unbundled high frequency spectrum ("HFS") necessary to provide advanced data services, as it is obligated to do, unless it owns and operates the splitters that divide loop spectrum. BA-MA may not require CLECs to own network equipment in order to obtain access to unbundled network elements. Indeed, BA-MA's position is directly contrary to the positions taken by incumbent LECs during the FCC's Line Sharing proceeding.

A better alternative would be for BA-MA to offer common splitter functionality on a per-line basis. The loop pre-qualification provisions of the proposed tariff could also lead to unnecessary inefficiencies. Other tariff provisions, including performance standards as well as proposed xDSL qualification or line conditioning charges, are questionable on their face and merit investigation by the Department.

Accordingly, the tariff should be suspended until the Department has had time to determine what alternatives would better serve the interests of consumers and the growth of competition in the Commonwealth.

Argument.

I. The Tariff Provisions Requiring Bell Atlantic to Remain the Voice Carrier As Part of the Service Provided By a CLEC or Data CLEC for xDSL Services are Anti-Competitive and Illegal.

BA-MA proposes that it would not provide xDSL capacity together with voice service capacity on a single loop unless the voice services are provided by BA-MA. *See* Proposed Tariff No. 17, Part B, §§ 19.1.1.A, 19.1.2.C.2. Although BA-MA proposes to offer such xDSL line sharing arrangements, it has not included any provision for permitting line splitting of loops leased to CLECs, whether as standalone loops (UNE-L) or part of the UNE-Platform (UNE-P). This means that under the proposed tariff only BA-MA would be able to use the existing network to provide customers with both local voice service as well as data service via xDSL over an existing loop. CLECs would be

barred from doing so, which would hinder the growth of competition, harm consumers, and contravene the law.

A. If BA-MA Does Not Permit CLECs To Provide Both Local Voice And xDSL Service on a Customer's Existing Line Using Unbundled Network Elements, Competition Will Be Unfairly Stifled.

Bell Atlantic is obligated to implement line sharing for data CLECs, under which the data CLEC provides xDSL services while BA-MA supplies voice services. But BA-MA improperly seeks to deny CLECs that purchase UNE-P or UNE-L the same opportunity to provide voice and data service on a customer's existing line, either by itself or in conjunction with a data CLEC. This is anticompetitive, discriminatory, and unlawful. The reasons for BA-MA's anti-competitive behavior are obvious. Bell Atlantic's proposal to limit the availability of xDSL capacity to situations where a data CLEC shares a copper loop with BA-MA voice service would lock in Bell Atlantic as the only carrier able to provide voice services as part of a combined voice / data services offering on an existing line. By using its control over essential facilities to prevent AT&T from offering advanced services over UNE-P loops, Bell Atlantic is not only constraining competition for advanced services, but also jeopardizing the very limited competition for voice services that is slowly beginning to emerge.

While xDSL is important as a stand-alone service, particularly for some business customers, the greater public policy concern is that Bell Atlantic is exploiting the growing consumer demand for advanced services over the existing voice line to undermine competition for such services throughout the residential market. In particular, it is increasingly apparent that a CLEC's ability to offer xDSL bundled together with voice service over an existing line has a powerful impact on its competitive ability to serve residential customers. Bell Atlantic's rapid deployment of advanced services has given it a huge first-mover advantage in the Massachusetts marketplace. Bell Atlantic plans to make 21 million residential and business lines xDSL capable through its Northeast services area by the end of the first quarter this year.⁽¹⁾ Unless BA-MA is required to provide CLECs the opportunity to provide both xDSL and analog voice service to customers, Bell Atlantic will be locked in -- and UNE-P CLECs will be locked out of -- all voice/advanced service bundles provided over a single line in the Massachusetts market.

In its proposed tariff, BA-MA is trying to arrogate to itself the unique ability to provide both voice and xDSL services over a single line. That is inappropriate and, as explained below, unlawful under the existing federal laws and rules that govern local competition. Consumer choice will be unfairly limited in Massachusetts if consumers wishing to order voice and xDSL services over a single line can only do so from BA-MA.

B. BA-MA Is Required to Allow CLECs to Use Leased Loops to Offer CLEC Customers Both Voice And xDSL Services Over the Existing Line.

Bell Atlantic's tariff provision that requires it to be the voice service provider when CLECs or data CLECs seek to provide competing advanced services on a customer's existing loop is unlawful. The Federal Communications Commission ("FCC") has ordered incumbent local exchange carriers ("ILECs") to provide, as a network element, access to the high-frequency portion of the local loop to a requesting CLEC on loops that carry the ILEC's basic telephone service.⁽²⁾ The Commission reasoned that enabling such "line sharing" would accelerate the ability of residential and small business customers to access competitive data services (such as xDSL-

based services)(3) from their choice of providers by placing competitive data service providers on a more equal footing with ILECs.(4)

In addition to such line sharing of BA-MA voice service with a data CLEC's data service, pre-existing federal rules also require Bell Atlantic to permit a CLEC to make use of both the data and voice channels of a single loop, either by itself or in conjunction with a separate data CLEC. The FCC's regulations provide that:

An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.

47 C.F.R. § 51.307(c). The significance of this requirement with respect to access to the high-frequency spectrum portion of a loop was emphasized in the FCC's *UNE Remand Order*, ¶¶ 190, *et seq.* The FCC first emphasized the importance of ensuring that CLECs have access to conditioned loops as UNEs, in order to be able to offer xDSL services. The FCC stated as follows:

We conclude that permitting incumbents to deny access to basic loops stripped of accreted devices, *i.e.*, "conditioned" loops, would preclude the ability of competitors to offer high-speed data services. Such unencumbered copper wire is necessary for requesting carriers to provide most types of xDSL service. ... Unbundling basic loops, with their full capacity preserved, allows competitors to provide xDSL services. This in turn will foster investment, innovation, and competition in the local telecommunications marketplace. Without access to these loops, competitors would be at a significant disadvantage, and the incumbent LEC, rather than the marketplace, would dictate the pace of the deployment of advanced services. We also note that the availability of conditioned loops enables competitors to deploy xDSL service beyond the major metropolitan areas. Finally, we note our obligation under section 706 to encourage the deployment of advanced services by, among other means, promoting competition in the telecommunications market.

Id. ¶ 190 (citations omitted). The FCC further clarified "that we require the incumbent to provide loops with all their capabilities intact, that is, to provide conditioned loops, wherever a competitor requests, even if the incumbent is not itself offering xDSL to the end-user customer on that loop. Thus, incumbent LECs cannot refuse a competitive LEC's request for conditioned loops on the grounds that they themselves are not planning to offer xDSL to that customer." *Id.* ¶ 191. As explained in Section II, below, the obligation to provide access to all functionalities of a loop, including the HFS used for xDSL services, includes the obligation to deploy line splitters that can be used by a CLEC.

Bell Atlantic currently provides arrangements, facilities, and support processes that enable it (or its data affiliates) to provide xDSL and voice services together over a single loop to retail customers. The physical arrangements that an ILEC must establish for a UNE-P CLEC are virtually identical to those which the ILEC uses when line sharing with itself (or an affiliate) or with a data CLEC. Thus, it is inherently discriminatory, and a violation of 47 U.S.C. § 251(c)(3), for BA-MA to refuse to cooperate in enabling CLECs such as AT&T to use the loop or the operational support systems of the ILEC to add xDSL capabilities to a UNE-P arrangement. Such conduct is antithetical to the objectives of the Telecommunications Act, unjust, and unreasonable.

The FCC's *Line Sharing Order* reiterates that xDSL services constitute a crucial segment of the market for local telecommunications services, and, because of their importance, the manner in which they are deployed will also affect the markets for traditional telecommunications.(5) Carriers have already recognized the competitive advantages of offering "one-stop shopping" to consumers and are using the full capacity of their copper loops by employing xDSL technologies that enable them to provide both voice and data services to a huge embedded base of voice customers. While the growing importance of advanced services creates new opportunities for competition, it also creates new opportunities for ILECs to hinder their rivals and restrict consumer choice. With the explosive growth of the Internet, e-commerce, and consumer demand for ready access to information and entertainment, the number and types of customers who desire high-speed data services have grown dramatically. New entrants in the local telephone business cannot hope to

achieve broad success over the long term unless they can efficiently provide high-speed digital data transmission capabilities in addition to traditional voice telephony. Regardless of whether a CLEC self-deploys xDSL assets or makes this service available to customers through arrangements with a third-party data CLEC, the CLEC's efforts to compete will be significantly constrained unless ILECs provide nondiscriminatory procedures that make it possible to add, modify or remove xDSL capabilities to a new or already operating UNE-P line, as well as to migrate to UNE-P customers who already subscribe to xDSL, without loss of the data service on that line.

There is no justification for BA-MA's refusal to provide CLECs with the ability to offer both voice and xDSL service to their customers. In the *Line Sharing Order*, the FCC found that the creation of the new line-sharing UNE would "level the competitive playing field" and "enrich consumer choice" by enabling customers who receive voice services from an ILEC to choose a CLEC to provide advanced services without incurring the additional expense of a second line. *Id.* ¶¶ 20, 35. There is no basis for asserting that CLECs cannot provide customers bundled voice and data services by adding xDSL capabilities to the voice service provided over UNE-P. In fact, the opposite is true. The *Line Sharing Order* recognizes the inherent economic disadvantage CLECs must face if they are required to provide data services over a loop other than the one that is already used to provide voice service to the same consumer. *Id.* at ¶¶ 38-40. This same economic disadvantage confronts carriers such as AT&T that wish to provide both xDSL and voice services.

CLECs are *entitled* to "obtain combinations of network elements and use those elements to provide circuit switched voice services as well as data services." *Id.* at ¶ 47. Any interpretation of the *Line Sharing Order* that denies AT&T the right to add xDSL to UNE-P voice services would be contrary to the FCC's longstanding policy that its role is not to pick winners and losers, but, rather, to ensure that the marketplace is conducive to investment, innovation, and consumer choice. *Local Competition, First Report and Order*, ¶ 12.(6) Consequently, BA-MA must allow AT&T and other CLECs to provide its customers both voice and xDSL service over a single line. Permitting BA-MA to require all users of xDSL service to use its voice service would not only be anticompetitive, but would also contravene the law and the clear intent and orders of the FCC.

II. BA-MA Should be Required to Provision the Line Splitter to be Used in a Line Sharing Arrangement, and Should Also Provide Line Splitting as an Option When a CLEC Leases the Entire Loop (through UNE-P or UNE-L).

BA-MA proposed tariff would require that in a line sharing arrangement CLECs must supply the splitters which separate the voice and xDSL transmissions, and either install and maintain them their own collocation cage ("Option A") or convey them to Bell Atlantic for installation closer to the main distribution frame ("MDF") and leave their maintenance to BA-MA ("Option C"). See Proposed Tariff No. 17, Part B § 19.1.4.B (page 2), and Part E, §§ 2.5.1.B (page 23) and 3.4.1.A (page 9). There is no "Option B." Although Options A and C may make sense for some CLECs in some circumstances, the tariff must be revised to provide additional xDSL deployment arrangements.

There are two categories of deficiencies in the tariff that should be corrected. First, for many CLECs Options A and C may be unnecessarily inefficient arrangements for participating in line sharing with BA-MA. BA-MA must offer CLECs the option of purchasing line splitting capacity on a per-line basis when a data CLEC engages in line sharing with BA-MA and leases just the high-frequency spectrum UNE. Second, BA-MA proposes no opportunity for a CLEC to purchase line splitting when a CLEC leases the entire loop and is not sharing it with BA-MA. CLECs are and should be entitled to purchase splitter capacity from Bell Atlantic when leasing an unbundled loop or the UNE Platform, but this option is also not reflected in the proposed xDSL tariff.

BA-MA has an obligation to provide line splitting functionality when it leases a loop to a CLEC, either on a standalone basis or as part of a UNE-P arrangement. As demonstrated above, CLECs are entitled to access and use all of the capabilities of UNE Loops, or UNE-P, to provide any telecommunications service, and BA-MA is obligated to facilitate such use. See 47 C.F.R. § 51.307(c). Thus, when a CLEC purchases a loop (in either a UNE-P or a UNE-L configuration), it acquires rights to the use entire loop, including the portions

used to provide voice service as well as the HFS capable of providing advanced service. This entitles the CLEC to obtain any technically feasible and nondiscriminatory methods and processes to enable UNE-P carriers to provide voice and advanced services, using the full functionality of the loop. In its Section 271 order regarding Bell Atlantic-New York, the FCC noted that Bell Atlantic must "provide access to *any* functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested." *BA-NY 271 Order*, ¶ 271 (emphasis added).⁽⁷⁾ The proposed tariff itself confirms that it is technically feasible to employ line splitters to separate the voice and data spectrum of a loop, and BA-MA uses splitters to enable itself to offer both voice and data services over a single loop to its customers. *See also Line Sharing Order* ¶ 67. There is no lawful basis upon which BA-MA may deny to some CLECs - those that purchase UNE-P or UNE-L - the same capabilities that BA-MA offers to itself or to data CLECs. Because it is the line splitter that allows access to the broadband functionality of the loop, and because it is technically feasible to provide CLECs with line splitting, BA-MA must provide voice CLECs who lease an unbundled loop - either by itself or through UNE-P - with access to a splitter for use with that loop.

BA-MA proposes to make line splitting available only as part of a line sharing arrangement, and only through two, limited scenarios. Both scenarios require a CLEC to purchase and provide splitter equipment. Once again, this is unlawful for many reasons, including that a CLEC cannot be required to own any network equipment as a precondition of obtaining access to UNEs. *See AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 392-393, 119 S.Ct. 721, 736, 142 L.Ed.2d 835 (1999); *Consolidated Arbitrations Docket D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94*, Phase 4-E Order at 13 (1998). It is also unlawfully discriminatory for the reasons discussed above.

Furthermore, both scenarios proposed by BA-MA will impose avoidable inefficiencies. Under "Option A," the splitter cards would be placed in a CLEC collocation cage. *See Proposed Tariff No. 17, Part E, § 2.5.1.B.1*. This scenario can degrade service quality and artificially inflates a CLEC's cost of doing business, as compared to placing the splitter in proximity to BA-MA's MDF, by adding to the splitting price a charge for unnecessarily long connecting cable. Under "Option C", the CLEC would provide splitter equipment for its exclusive use, and BA-MA would install that splitter "in a relay rack between the POT bay" serving the CLEC "and the main distribution frame." *Id.*, § 2.5.1.2. By comparison, this scenario would reduce the amount of unnecessary intra-office cabling, but it would still lead to inefficiencies by requiring a CLEC to purchase an entire splitter rather than lease splitter capacity on a per-line basis as xDSL service is deployed to each customer.

AT&T suggests a much more efficient approach, which would comport with BA-MA's obligations under federal law. BA-MA should be required to deploy splitter shelves that would be made available to CLECs on a per-line basis. This is technically feasible, and would permit much more efficient deployment of splitter equipment. Both GTE and SBC provide common splitters, and there is no reason why BA-MA should be allowed to refuse to do so. The network architecture used to deploy splitters for UNE-P CLECs providing their own voice services in conjunction with a data offering need not be less efficient or more cumbersome than that used to deploy splitters for data CLECs engaged in line sharing with BA-MA voice services. BA-MA may not deny CLECs access to a technically feasible point of interconnection between the Bell Atlantic network and the packet switching network of a CLEC or data CLEC.

Not only would Bell Atlantic ownership of splitters be more efficient, it is legally required both in the context of line sharing as well as where a CLEC leases a loop through UNE-P or UNE-L and desires to use the broadband capabilities of the loop. In the context of line sharing, BA-MA cannot satisfy its obligations to unbundle xDSL capabilities without offering to provide the line splitter. BA-MA is obligated to unbundle the high frequency portion of the loop as a separate network element. *See Line Sharing Order* ¶¶ 16, 67-68. It is technically feasible for BA-MA to do the splitting in a line sharing arrangement. As the FCC found:

"[T]he same architecture that an incumbent uses to provide its own shared-line xDSL services is capable of providing shared line access to requesting carriers with minimal modifications. Specifically, after the xDSL traffic has passed through the splitter and into the output copper wire pair, it may be routed to a competitive carrier's DSLAM collocated in the incumbent's central office. We are

persuaded that there is essentially no technical difference between sending xDSL traffic to a competitor's DSLAM and to the incumbent's DSLAM.

Line Sharing Order, ¶ 67. Since BA-MA is refusing to split the HFS from the voice spectrum on the loop, it is not complying with the obligation to provide access to the HFS.

Furthermore, BA-MA should not be allowed to refuse to offer splitter functionality in conjunction with the leasing of entire loops through UNE-P or UNE-L. A splitter is a part of the loop element. It is a passive electronic device attached to the loop to perform frequency splitting and filtering functions. The FCC has made clear that the loop element is defined to include all attached electronics, with the exception of the DSLAM. *UNE Remand Order* ¶ 175. (8) Further, the fact that a given loop may not currently be equipped with the splitter is irrelevant, as 47 U.S.C. § 251(c)(3) requires ILECs to provide modifications of their facilities to the extent necessary to accommodate access to network elements. *UNE Remand Order* ¶ 173. Because UNE-P CLECs cannot access the high frequency portion of the loop without the splitter -- and the splitter is part of the loop element -- the ILEC must modify their facilities to enable UNE-P CLECs to secure access to the loop's full functions and capabilities.

Requiring Bell Atlantic to deploy splitters on UNE-P loops at the request of a CLEC is fully consistent with the FCC's findings on loop conditioning. The FCC requires ILECs to condition loops to "ensure that the loop definition will apply to new as well as current technologies, and to ensure that competitors will continue to be able to access loops as an unbundled network element as long as that access is required pursuant to section 251(d)(2) standards." *UNE Remand Order* ¶ 167. Like loop conditioning, the splitter merely enables a UNE-P CLEC to use the basic loop; it does not create a "superior quality" loop. As far back as August 8, 1996, the FCC recognized a CLEC's right to obtain access to xDSL-capable loops. *Local Competition, First Report and Order*, ¶ 382.

In sum, BA-MA should be required to provide line splitting, and to perform the splitting function in the context of line sharing. Its refusal to do so is unlawful, and bad public policy.

III. The Proposed xDSL Charges are Excessive.

The xDSL charges proposed by BA-MA appear to be excessive, and are supported by very thin backup. Bell Atlantic proposed similar charges in New York, which were rejected by the New York Public Service Commission ("PSC"). See *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case 98-C-1357, "Opinion and Order Concerning DSL Charges," Opinion No. 99-12 (Dec. 17, 1999).

The following table compares the xDSL loop pre-qualification and conditioning charges approved by the New York PSC with the charges proposed by BA-MA for the same work.

	BA-MA Proposal	Ordered by the NY PSC
<u>DSL Loop Pre-Qualification</u>		
Mechanized Loop Qualification (per month)	\$0.65	\$0.11
Manual Loop Qualification (per inquiry)	\$113.67	\$12.11
Engineering Query	\$147.91	\$34.19
<u>DSL Loop Conditioning</u>		
Engineering Work Order	\$671.23	\$24.30
Load Coil Removal (to 21,000 ft)	\$910.35	\$318.71

Load Coil Removal (to 27,000 ft)	\$1,210.04	\$423.00
Remove Single Bridged Tap	\$250.60	\$103.46
Remove Multiple Bridged Taps	\$609.92	\$249.91
ISDN Electronics	\$894.15	\$291.38

The workpapers provided by BA-MA do not support the excessive xDSL qualification and conditioning charges in the proposed tariff. At the very least, these proposed charges should be investigated fully before they take effect.

IV. The Pre-Qualification Provisions Proposed by BA-MA Should Be Modified.

A. Bell Atlantic Should Not Be Allowed To Mandate Costly Mechanized Pre-Qualification, As It May Be Inappropriate.

BA-MA requires that all xDSL links must be pre-qualified, and that before submitting an order CLECs must always use BA-MA's mechanized pre-qualification database to determine whether a given loop is qualified for xDSL service. *See Proposed Tariff No. 17, Part B, § 5.4.2.A.* AT&T agrees that CLECs should have electronic access to a robust mechanized pre-qualification database. However, it does not make sense to mandate that CLECs engage in mechanized pre-qualification for each and every loop over which they may wish to order xDSL service.

For mechanized pre-qualification to be meaningful, the database to which CLECs are given access should provide complete and accurate information regarding the xDSL capabilities of existing loops in BA-MA's network. At the very least, CLECs should be given access to the same database that BA-MA uses internally to determine whether a loop is xDSL capable. It is entirely unclear at this time, however, how complete the Mechanized Pre-Qualification Database is, or whether it would be available in real-time.

Furthermore, it is not appropriate to require mechanized pre-qualification as a condition for ordering an xDSL capable loop in all cases. First, there are circumstances under which a carrier might want to go straight to a manual loop qualification. For example, if a CLEC believes that a loop is qualified for ADSL but wants to use the loop for a different form of DSL, then the mechanized loop qualification response might be a "YES" for ADSL but may not provide sufficient information to permit a CLEC to determine whether the line is qualified to provide a different flavor of DSL. The mandatory mechanized loop qualification in such a situation might be useless, and the CLEC would have to pay for both a mechanized and manual loop qualification. Second, under Proposed Tariff No. 17, Part B, § 5.4.2.A.3, BA-MA seems to require a manual loop qualification before performing an engineering query. As previously noted, there are circumstances where a carrier might want to proceed directly to an engineering query, but would be required to pay for both a mechanized and manual qualification which could be of little use. Third, there will be circumstances where no form of pre-qualification would make sense. For example, if a customer currently has xDSL service from BA-MA, and that same type of DSL service is migrated to a CLEC on the existing loop, prequalification would be unnecessary since the existence of xDSL service demonstrates that the loop is capable of providing that form of DSL.

In short, in its current form, § 5.4.2.A does little to address the real needs of the CLECs, and imposes both inefficiencies and excess costs on the CLECs ordering advanced services from BA-MA.

B. The Interval for Manual Loop Qualification Should Not be Longer in Massachusetts than in New York.

BA-MA proposes that it will complete manual loop qualifications in three business days. *See Proposed Tariff No. 17, Part A, § 3.2.3.A.7 (page 5).* In New York, this interval is only two days under the Carrier-to-Carrier metrics established by the Public Service

Commission. *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Case 97-C-0139, "Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in part Petitions for Reconsideration and Clarification," at 19 (Feb. 16, 2000) (PO-8-01 - "Average Response Time - Manual Loop Qualification: Standard is 95% completed within 48 hours"). BA-MA should be able and required to meet the two-day interval.

V. Other Non-Cost xDSL Tariff Provisions Also Merit Further Inquiry.

Tariff 17 also contains various other provisions which require further explanation and inquiry. Several examples follow.

First, in Proposed Tariff No. 17, Part A, § 3.2.7, the interval for provisioning of a line sharing arrangement is six days. Given the fact that the provisioning interval for a new xDSL loop is also six days, this time frame is excessive. The interval should be shorter if the line is already installed. BA-MA schedules the provisioning of unbundled links using the SMARTS clock, which can substantially reduce installation or provisioning times. *See* Proposed Tariff No. 17, Part A, § 3.2.3.B. The Department should explore whether the same scheduling mechanism should be used for provisioning line sharing arrangements or xDSL capable loops.

Second, Part B, § 19.1.5.B states that when BA-MA provides inside wire maintenance services to the customer, it will only be responsible for testing and repairing inside wire for voice grade services, and BA-MA will not test, repair or upgrade inside wire to clear trouble calls associated with the CLEC's advanced data services. This is improper, as BA-MA is obligated to provide CLECs with the full functionality of each loop leased through UNE-P or UNE-L.

Third, Part B, § 19.1.5.D indicates that if the data service is interfering with the voice service, restoration of voice takes precedence over data. In an effort to restore voice service, BA-MA may remove advanced data services from the customer. However, this ignores the fact that some customers place more value on their data service than their voice service. To presume that voice service is more important to a customer and therefore establish repair and maintenance procedures which risk interfering with their vital service discriminates against both customers and CLECs providing advanced data services. The Department should investigate how to address customer preferences for restoration of service.

Conclusion.

For the foregoing reasons, AT&T respectfully requests that the Department suspend BA-MA's proposed xDSL tariff until the Department has had the opportunity to determine what alternatives would better serve the interests of consumers and the growth of competition in the Commonwealth.

Respectfully submitted,

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May 17, 2000.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on May 17, 2000.

1. 1 Bell Atlantic Press Release, "Bell Atlantic Triples Availability of Independent DSL Service In Massachusetts" (March 13, 2000).

2. 2 *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Fourth Report and Order, FCC 99-355 (Dec. 9, 1999) ("*Line Sharing Order*")

3. 3 xDSL technologies add functionality to both ends of a local loop (or subloop) to create high-speed digital transmission channels. Certain xDSL technologies, such as asymmetric digital subscriber line ("ADSL"), are uniquely capable of supporting competitors' efforts to provide voice and high-speed Internet access efficiently to the mass market of consumers over the existing wireline loop infrastructure.

4. 4 "Federal Communications Commission Action to Accelerate Availability of Advanced Telecommunications Services For Residential and Small Business Consumers," FCC Press Release, CC Docket No. 98-147, Report No. 99-54 (rel. Nov. 18, 1999).

5. 5 *See, e.g., Line Sharing Order* ¶¶ 33, 39-41 (recognizing that there is a growing demand by residential and small business customers for xDSL-based and similar data services, and that it is most economical for such customers to receive data service over the same loop that they use to receive voice service).

6. 6 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, No. FCC 96-325, 11 FCC Rcd 15499, ¶ 12 (1996).

7. 7 *Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, "Memorandum and Order" FCC 94-404, 1999 WL 1243135, at ¶ 271 (rel. Dec. 22, 1999) ("*BA-NY 271 Order*").

8. 8 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 1999 WL 1008985, (rel. Nov. 5 1999) ("*UNE Remand Order*").